

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA

v.

2:06CR17

FRANK A. KELLY,

Defendant.

REPORT AND RECOMMENDATION
CONCERNING GUILTY PLEA

Defendant, by consent, has appeared before the undersigned pursuant to Rule 11, Federal Rules of Criminal Procedure, and referral from a United States District Judge and has entered a guilty plea to conspiracy to commit mail and bank fraud, in violation of 18 U.S.C. §§ 371; 1341 and 2; and 1344 and 2. Defendant is also charged with mail fraud (Count 2), bank fraud (Count 3), and making/possessing a false security (Counts 3, 4, and 5), in violation of 18 U.S.C. §§ 1341 and 2; 1344 and 2; and 513(a) and 2. Defendant understands that these charges will be dismissed upon acceptance of his guilty plea, and the United States confirmed defendant's understanding.

Defendant was represented by appointed counsel, Jon M. Babineau, Esquire. On November 7, 2006, defendant appeared before the Court for the purpose of entering his guilty plea. He was appropriate in appearance, responsive, and competently prepared for the hearing.

Defendant answered all questions put to him in clear and concise language. On those occasions when he had a question, defendant consulted with counsel and then promptly answered. Defendant was courteous and appropriate in his behavior at all times and clearly

understood the seriousness of his position. At the close of the proceeding, defendant was remanded to custody, pending completion of a presentence report.

Defendant is thirty-seven years of age, has acquired a GED, and speaks English as his native language. There was no evidence that defendant was on drugs, alcohol, or medication which might impair his judgment. He was cooperative throughout the proceeding.

Defendant entered the guilty plea pursuant to a plea agreement. The Court is completely satisfied, based upon defendant's responses, that he fully appreciates his position. Furthermore, he acknowledged that the statement of facts prepared in anticipation of his plea accurately reflects the government's evidence, in the event of trial.

After cautioning and examining defendant under oath concerning each of the subjects mentioned in Rule 11, the Court determined that the offense charged is supported by independent facts, establishing each of the essential elements of such offense. Therefore, the Court recommends that the guilty plea be accepted and that defendant be adjudged guilty and have sentence imposed accordingly.

Failure to file written objections to this report and recommendation within ten days from the date of its service shall bar an aggrieved party from attacking such report and recommendation before the assigned United States District Judge. 28 U.S.C. § 636(b)(1)(B).

Norfolk, Virginia

November 8, 2006

/s/
James E. Bradberry
United States Magistrate Judge

Clerk's Mailing Certificate

A copy of the foregoing Report was mailed this date to each of
the following:

Jon M. Babineau, Esquire
Federal Public Defender's Office
Town Point Center, Ste. 403
150 Boush Street
Norfolk, VA 23510

Stephen W. Haynie, Esquire
Assistant United States Attorney
United States Attorney's Office
101 West Main Street, Suite 8000
Norfolk, VA 23510

Fernando Galindo, Acting Clerk

By _____
Deputy Clerk

_____, 2006